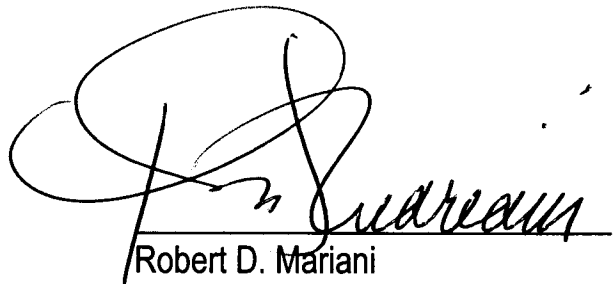


1. As stated in the Memorandum Opinion, the Court finds Count I (Rule of Decision) is not properly pled as an independent claim for relief, but contains allegations integral to Count II. The Court therefore construes the allegations in Count I (Doc. 30 ¶¶ 72–76) as incorporated into Count II (Declaratory Relief) of the Amended Complaint pursuant to Fed. R. Civ. P. 8(f) (“Pleadings must be construed so as to do justice”).
2. As stated in the Memorandum Opinion, the Court finds Count VI (Relief Demanded) to be a statement of requested relief. The title “Count VI” is therefore **STRICKEN**

from the Amended Complaint. (Doc. 30 at 27). The allegations in Count VI will be construed as a prayer for relief.

3. As stated in the Memorandum Opinion, subparagraphs (7)-(13) under Relief Demanded for Count III of the Amended Complaint (Doc. 30 at 29–30), as well as all references to “mandamus” under the Relief Demanded section of the Amended Complaint (Doc. 30 at 29, 31, 33), are **STRICKEN**.
4. Count IV (Breach of Fiduciary Duty – Misrepresentation) of the Amended Complaint is **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.
5. Defendant’s Motion to Dismiss Count II (Declaratory Relief), Count III (Violation of Employee Welfare Benefit Plan and Policy), and Count V (Breach of Fiduciary Duty – Duty of Loyalty) is **DENIED**.



Robert D. Mariani  
United States District Judge